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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

JUL 15 2002

Contact Person:

Identification Number:

Telephone Number:

U/L: 4941.04-00
4943.04-00
4946.01-00

T: EO:BY

LEGEND: A =

B =

C =

D =

E =

Employer Identification Number:

Dear Sir or Madam:

This is in reply to your letter of December 20, 2001, as modified by your letter of July 11, 2002, requesting an extension of the period within which you are permitted to dispose of your excess business holdings.

You are exempt under section 501(c)(3) of the Internal Revenue Code and are a private foundation within the meaning of section 509(a) of the Code.

You were established by A, now deceased. You were funded by A with a contribution of shares of stock in C, a corporation originally established by A's father and uncle. Over the next several years you sold your shares in C and at the date of A's death you had no remaining shares of stock in C. Your current directors include B, B's wife and their daughter. They are also your officers.

As previously stated C was established by A's father and his uncle. B is the president and CEO of the company and D, his cousin, the son of A's brother, is the chairman of its board of directors. C has two classes of stock, common and non-voting preferred. The common stock is equally split between B and D. The preferred non-voting shares of stock are owned by several different persons. E, the company profit sharing plan, also owns a substantial number of shares of the preferred non-voting stock in C. Prior to his death, A also held shares of C's preferred stock. A's stock holdings were to be transferred to you by A's estate upon his death.

After A's death, and even before you received any of the shares of non-voting preferred stock in C, the executors of A's estate had begun attempting to dispose of at least some of A's stock holdings in C and were able to sell a small number of shares to various individuals. C

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Re:

indicated that it was not interested in redeeming any significant number of shares of the stock. However, the executors were able to negotiate the sale of a substantial number of shares of stock to E, C's profit sharing plan. The agreement with E called for the sale of a set amount of stock each year over a 10 year period.

While the estate was in probate, you requested several rulings from the Service concerning the sale and/or distribution of your holdings in C. In response to your request for a ruling in this matter we recognized that after A's death you were placed in a position whereby you would have excess business holdings in C. Because you were to receive these shares other than by purchase, you had 5 years within which to dispose of your holdings. See section 4943(c) of the Code and the regulations thereunder. We also concluded, among other things, that C's profit sharing plan was not a disqualified person within the meaning of section 4946(a)(1).

Several months after our earlier ruling letter was issued, A's estate distributed the shares of preferred stock to you. However, the local court with jurisdiction over this matter ordered you to return the shares to the estate since the court had not yet determined whether to approve the proposed sale to the profit sharing plan. Eventually the court approved the proposed sale to E and the shares of preferred stock were transferred to you.

Upon receipt of our ruling and after receiving concurrence from the court, you began distributing your stock in C to the profit sharing plan pursuant to the agreement you had entered into. However matters became complicated because the company declared a stock split. You have represented that between the above mentioned action of the court and the stock split, your efforts to make the necessary stock distributions were put off schedule. Accordingly, you have requested that we extend the initial 5 year period within which you were required to dispose of your excess business holdings in C.

You have represented that you have engaged in diligent efforts to dispose of your excess business holdings within the initial five-year period within which you had to dispose of these shares and were unable to complete doing so by reason of the size and complexity of your holdings in the corporation. In addition, during the course of the probate court proceedings, you submitted to this office and to the appropriate state officials plans for disposing of your holdings in C. You have also indicated that at the end of the extended period you will have reduced your holdings to under 2 percent of both the outstanding amount of preferred stock and of shares of both the common and preferred shares of stock in C.

You have requested a ruling that the Service grant you an extension through July 31, 2004, within which to dispose of your excess business holdings in C.

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Re:

Section 4941(a) of the Code imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code provides that a sale or exchange of property, whether done directly or indirectly, between a disqualified person and a private foundation is an act of self-dealing.

Section 53.4941(d)-1(b)(3) of the Foundation and Similar Excise Tax Regulations provides that the term indirect self-dealing shall not include a transaction with respect to a private foundation's interest or expectancy in property held by an estate regardless of when title to the property vests under local law if certain conditions are met.

Section 4943(a) of the Code imposes a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year.

Section 4943(c)(1) of the Code defines the term excess business holdings as meaning with respect to the holding of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2)(C) provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

Section 4943(c)(6) of the Code provides that, with certain exceptions not applicable here, if after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have -

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

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Section 4943(c)(7) provides that the Secretary may extend for an additional 5 year period the period under subparagraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if -

(A) the foundation establishes that -

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period -

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundations submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Section 4946(a)(1) defines the term "disqualified persons" with respect to a private foundation as including:

(A) a substantial contributor to the foundation,

(B) a foundation manager

(C) an owner of more than 20 percent of the total combined voting power of a corporation which is a substantial contributor to the foundation

(D) a member of the family of any individual described in (A)(B) or (C)

(E) a corporation of which persons described in subparagraph (A),(B),(C), or (D) own more than 35 percent of the total combined voting power

Re:

(F) a partnership in which persons described in subparagraph (A),(B),(C) or (D) own more than 35 percent of the profits interest, and

(G) a trust or estate in which persons described in subparagraph (A), (B), (C) or (D) hold more than 35 percent of the beneficial interest, and

(H) only for purposes of section 4943, a private foundation

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C) or members of their family who made substantially all of the contributions to the private foundation in question.

As discussed above, several years ago we gave consideration to your proposal to distribute almost all of the non-voting preferred stock you held in C to E and certain other parties. Based on the information you had provided we determined that you were to have excess business holdings in C and had presented a program under which it appeared that you would be able to divest the bulk of your holdings in C and reduce them to a permissible holdings level, i.e. the 2 percent de minimis permitted holdings level provided for in section 4943(c)(2)(C) of the Code. In addition, we concluded that E, C's profit sharing plan, was not a disqualified person within the meaning of section 4946(a)(1) of the Code.

You have represented that you have engaged in diligent efforts to dispose of your excess business holdings within the initial five-year period within which you had to dispose of these shares and were unable to do so by reason of the size and complexity of your holdings in the corporation. In addition, during the course of the court proceedings you had submitted to this office and to the appropriate state officials plans for disposing of your holdings in C. As previously mentioned, the Service gave consideration to this proposal and issued the above mentioned ruling letter to you. You have also indicated that, if we extend the period within which you are to dispose of your excess business holdings, at the end of this extended period you will have reduced your holdings to under 2 percent of both the outstanding amount of preferred stock and of shares of both the common and preferred shares of stock in C.

Accordingly, based on the information submitted we have concluded that, as provided in section 4943(c)(7) of the Code, an extension through July 31, 2004, should be granted to you to allow you to dispose of your excess business holdings in C.

If at the end of this period your holdings in C, have been reduced to under 2 percent of both the outstanding amount of preferred stock and of shares of both the common and preferred stock in C, you will come within the 2 percent permitted holdings rule of section 4943(c)(2)(C) and will not have excess business holdings in C.

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Re:

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the TE/GE Customer Service office. Because this letter could help resolve any questions concerning your federal income tax status, it should be kept in your permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the TE/GE Customer Service office at

Sincerely yours,



Joseph Chasin
Acting Manager,
Exempt Organizations
Technical Group 2